

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Jonathan Aaron Davis)

Plaintiff,)

v.)

Dr. John Solomon, *Dir. of Health Service*)
SCDC; Dr. Thomas A. Moore, Jr., *Dir. of*)
Medical SCDC; Dr. Thomas E. Byrne,)
Physician of Allendale CI; Nurse Pamela C.)
Derrick, *Nurse Administrator/Manager I*,)

Defendants.)

C/A No. 0:12-CV-2667-RMG

ORDER

This matter is before the Court on the Report and Recommendation, (“R&R”), of the Magistrate Judge recommending dismissal of this *pro se* section 1983 action with prejudice for lack of prosecution. (Dkt. No. 44). For the reasons set forth below, the Court adopts the R&R as the order of the Court.

Discussion

Plaintiff filed this *pro se* claim pursuant to 28 U.S.C. § 1983 on September 17, 2012. (Dkt. No. 1). This matter was referred to a Magistrate Judge in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC for all pretrial proceedings. The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). In reviewing these pleadings, the Court is mindful of its charge to construe liberally the pleadings of this *pro se* litigant. *See, e.g., De’Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003).

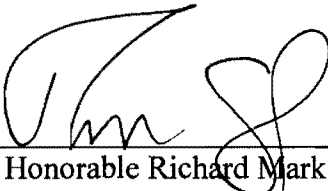
On March 27, 2013, Defendants filed a motion for summary judgment. (Dkt. No. 35). The following day the Magistrate Judge issued an order, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), directing the clerk to forward an explanation of the summary judgment and dismissal proceedings to Plaintiff. (Dkt. No. 36). Further, the order directed Plaintiff to respond to the motion for summary judgment by May 2, 2013. (*Id.*). A week after the deadline, the Magistrate Judge issued another order instructing Plaintiff that failure to respond by May 28, 2013, would result in a recommendation of dismissal for lack of prosecution. (Dkt. No. 41). On June 3, 2013, after no response was received from Plaintiff, the Magistrate Judge issued the R&R recommending that the claim be dismissed with prejudice for lack of prosecution and that any pending motions be terminated. (Dkt. No. 44).

The Magistrate Judge dutifully reviewed the pleadings, accurately summarized the law, and correctly concluded that the Court should dismiss Plaintiff's section 1983 claim for lack of prosecution. (Dkt. No. 44). Despite warnings from the Magistrate Judge that the claim would be dismissed for failure to prosecute, Plaintiff has failed to respond to Defendants' motion for summary judgment. The last filing by the Plaintiff occurred on December 5, 2012, indicating either dilatory action or abandonment of the claim. Finally, given the Magistrate Judge's prior explicit warning that dismissal would be recommended if the Plaintiff failed to respond, dismissal is the only appropriate sanction. Accordingly, the Magistrate Judge was correct in recommending that the Court find Plaintiff has satisfied all the criteria for dismissal set forth in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). (Dkt. No. 44 at 2 n. 1).

Conclusion

After careful review of the record, the Magistrate Judge's R&R, and the applicable law, this Court therefore adopts the R&R as the order of this Court. Accordingly, the Court DISMISSES this action with prejudice for lack of prosecution.

AND IT IS SO ORDERED.



The Honorable Richard Mark Gergel
United States District Court Judge

June 24, 2013
Charleston, South Carolina